

## **CITY COUNCIL AGENDA REPORT**

**SUBJECT: AN URGENCY AND REGULAR ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO AMENDING CHAPTER 16.32 "IMPROVEMENTS" TO ALLOW FOR TRUST DEEDS TO BE USED AS A GUARANTEE FOR THE COMPLETION OF IMPROVEMENTS.**

**AGENDA DATE: October 7, 2008**

**PREPARED BY: Jennifer M. Lyon, City Attorney**

**APPROVED FOR AGENDA BY: Ralph Velez, City Manager**



**RECOMMENDATION:** (1) Consider ordinance; (2) If appropriate, adopt urgency ordinance and introduce regular ordinance by title only, waive full reading.

**FISCAL IMPACT:** None.

**BACKGROUND:** When developers apply for final map recordation, many times some improvements have yet to be completed. State law allows for the City to enter into a subdivision improvement agreement with the developer to secure performance of the outstanding improvements. However, the developer must also furnish some form of security to ensure performance of the improvements. Currently, the Calexico Municipal Code allows the developer to submit surety bonds, cash, or other instruments of credit. State law allows the City to also accept security interests in real property as a form of security.

**DISCUSSION (Current consideration):** The City has received grant funds from the Federal Government to construct off-site improvements related to the Towncenter Industrial Plaza. Towncenter needs to record its final map in order to proceed with its development and eventually towards its commitments under the federal grant obligations. Towncenter has proposed to give the City a trust deed on certain land to secure its outstanding off-site improvements. State law allows the City in its discretion to accept security interests as a form of surety for the construction of outstanding improvements if it is specified in its local ordinance. Due to the fact that the City would benefit from this project and the City does not want to risk losing the project that is tied to the grant money, there is an urgent need to modify Chapter 16.32 of the Municipal Code to allow for the acceptance of trust deeds as a form of security.

The proposed modification to the Municipal Code is being proposed both as an urgency ordinance to take effect immediately and as a regular ordinance which takes effect 30 days after adoption. The urgency ordinance must be approved by a two-thirds vote of the Council. Therefore, if the Council wishes to take action to approve this matter, staff requests that both the urgency ordinance be approved and the regular ordinance be introduced by title only.

**ORDINANCE NO. \_\_\_\_\_**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF CALEXICO AMENDING CHAPTER 16.32  
“IMPROVEMENTS” TO ALLOW FOR TRUST DEEDS TO BE  
USED AS A GUARANTEE FOR THE COMPLETION OF  
IMPROVEMENTS**

**WHEREAS**, Government Code section 66499(a)(5) allows cities to accept any form of security, including security interests in real property, to secure the future completion of improvements by subdividers of land as long as the city’s ordinance specifies that such security is allowed; and

**WHEREAS**, the Calexico Municipal Code currently allows bonds, cash and other instruments of credit to be used to secure developers’ agreements for construction of improvements; and

**WHEREAS**, the City has an urgent need due to its current fiscal situation to facilitate development that will in turn give back to the City; and

**WHEREAS**, the City has received grant funds from the Federal Government specifically to be used in an industrial development project for off-site improvements and the City needs the Towncenter Industrial Plaza development as a partner in the use of the grant funds; and

**WHEREAS**, in order for the Towncenter Industrial Plaza to obtain recordation of its final map, it is necessary for Towncenter to provide security for the completion of certain off-site improvements; and

**WHEREAS**, Towncenter has proposed to give the City a trust deed on certain property as security for the completion of the off-site improvements.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Calexico as follows:

**Section 1.** That the above-listed recitals are true and correct.

**Section 2.** That the City Council hereby finds, determines and declares that an urgency exists within the meaning of Government Code section 36937, in that without the allowance of trust deeds as a form of security for subdivision improvement agreements, the City could potentially lose the Federal Grant funds to be used as part of an industrial development project, which project is necessary to help fiscal stability and job creation in the City.

**Section 3.** That the City Council further finds, determines and declares that this is an urgency ordinance and that it is necessary for this ordinance to take effect immediately.

**Section 4.** Chapter 16.32, Section 16.32.120 is hereby amended to read as follows:

**“16.32.120 Guarantee for construction of improvements--Form of surety.**

In the event the approval of the tentative map requires agreement for improvement of streets, utilities, or other facilities in connection with the subdivision, and the improvements have not been installed and accepted by the city prior to the presentation of the final map to the city council, the subdivider shall submit one or more of the following forms of security. The city in its discretion will determine if such security is sufficient based on the type of project and extent of improvements to be secured. The subdivider shall:

**A. Bond.** File with the city clerk a bond in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. The bond shall be executed by the subdivider as principal, and a corporation authorized to act as surety under the laws of the state of California as surety. The bond shall be payable to the city and be conditioned upon the faithful performance of any and all work required to be done within a specified reasonable time; or

**B. Cash or Negotiable Bond.** Deposit with the city clerk cash or negotiable bonds of the kind approved by law for securing deposits of public money in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. Whenever the subdivider elects to deposit cash or approved negotiable bonds, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the cash or negotiable bonds are filed to cause the work to be done and to pay all costs therefore from such deposit; or

**C. Instrument of Credit.** Deposit with the city clerk, and subject to the approval of the city finance officer, an instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed are on deposit and guaranteed for payment; further agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument of credit. Whenever the subdivider elects to deposit an instrument or instruments of credit, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the instrument or instruments of credit are filed to cause the work to be done and to pay all costs therefore from such funds which are on deposit pursuant to the aforementioned instrument or instruments of credit. “Instrument or instruments of credit” is defined to include the establishment of a construction loan disbursement account which requires the approval and the signature of the city by an appropriate city official as a condition precedent to any disbursement of funds contained in such construction loan disbursement account; or

**D. Security Interests in Real Property.** Execute the necessary documents to provide a security interest in real property to the city in an amount equivalent to the amount that the city engineer estimates and determines to be necessary to complete all of the required improvements. The document may be in the form of a lien or a trust deed and must be submitted to the city for review and approval prior to acceptance. If the city accepts the form of security, the security interest shall be recorded."

PASSED AND ADOPTED by the City Council of the City of Calexico, State of California, on October 7, 2008, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mayor Louis Fuentes

ATTEST:

\_\_\_\_\_  
Lourdes Cordova, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CALEXICO AMENDING TITLE 16, CHAPTER 16.32  
“IMPROVEMENTS” TO ALLOW FOR TRUST DEEDS TO BE  
USED AS A GUARANTEE FOR THE COMPLETION OF  
IMPROVEMENTS**

**WHEREAS**, Government Code section 66499(a)(5) allows cities to accept any form of security, including security interests in real property, to secure the future completion of improvements by subdividers of land as long as the city’s ordinance specifies that such security is allowed; and

**WHEREAS**, the Calexico Municipal Code currently allows bonds, cash and other instruments of credit to be used to secure developers’ agreements for construction of improvements; and

**WHEREAS**, the City would like to allow security interests in real property to be used as a form of security for subdivision improvement agreements.

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Calexico as follows:**

**Section 1.** That the above-listed recitals are true and correct.

**Section 2.** Chapter 16.32, Section 16.32.120 is hereby amended to read as follows:

**“16.32.120 Guarantee for construction of improvements--Form of surety.**

In the event the approval of the tentative map requires agreement for improvement of streets, utilities, or other facilities in connection with the subdivision, and the improvements have not been installed and accepted by the city prior to the presentation of the final map to the city council, the subdivider shall submit one or more of the following forms of security. The city in its discretion will determine if such security is sufficient based on the type of project and extent of improvements to be secured. The subdivider shall:

**A. Bond.** File with the city clerk a bond in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. The bond shall be executed by the subdivider as principal, and a corporation authorized to act as surety under the laws of the state of California as surety. The bond shall be payable to the city and be conditioned upon the faithful performance of any and all work required to be done within a specified reasonable time; or

**B. Cash or Negotiable Bond.** Deposit with the city clerk cash or negotiable bonds of the kind approved by law for securing deposits of public money in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. Whenever the subdivider elects to deposit cash or approved negotiable bonds, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the cash or negotiable bonds are filed to cause the work to be done and to pay all costs therefore from such deposit; or

**C. Instrument of Credit.** Deposit with the city clerk, and subject to the approval of the city finance officer, an instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed are on deposit and guaranteed for payment; further agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument of credit. Whenever the subdivider elects to deposit an instrument or instruments of credit, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the instrument or instruments of credit are filed to cause the work to be done and to pay all costs therefore from such funds which are on deposit pursuant to the aforementioned instrument or instruments of credit. "Instrument or instruments of credit" is defined to include the establishment of a construction loan disbursement account which requires the approval and the signature of the city by an appropriate city official as a condition precedent to any disbursement of funds contained in such construction loan disbursement account; or

**D. Security Interests in Real Property.** Execute the necessary documents to provide a security interest in real property to the city in an amount equivalent to the amount that the city engineer estimates and determines to be necessary to complete all of the required improvements. The document may be in the form of a lien or a trust deed and must be submitted to the city for review and approval prior to acceptance. If the city accepts the form of security, the security interest shall be recorded."

**SECTION THREE:** This Ordinance was introduced on October 7, 2008.

**SECTION FOUR:** Section Two of this Ordinance shall become effective thirty days following its passage and adoption.

**SECTION FIVE:** The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

**PASSED AND ADOPTED** this 21st day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Louis Fuentes, Mayor of the City of  
Calexico, California

**ATTEST AND CERTIFICATION**

I hereby certify that this is a true and correct copy of Ordinance No. \_\_\_\_, which has been published pursuant to law.

\_\_\_\_\_  
Lourdes Cordova, City Clerk  
City of Calexico